

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

In the Matter of the Arbitration Between

Name of Claimant

Allan A. Kaplan

92-00486

Name of Respondent

Merrill Lynch Pierce Fenner & Smith Inc

REPRESENTATION

For Claimant, Allan A. Kaplan ("Kaplan"): Philip J. Snyderburn, Esq., of Snyderburn, Rishoi & Swann.

For Respondent, Merrill Lynch Pierce Fenner & Smith, Inc. ("Merrill Lynch"): Charles L. Henderson of Merrill Lynch.

CASE INFORMATION

Statement of Claim filed on: February 10, 1992.

Claimant's Submission Agreement signed on: January 17, 1992

Statement of Answer filed by Respondent, Merrill Lynch on: April 23, 1992.

Respondent's Submission Agreement and Corporate Acknowledgment signed on: April 21, 1992 by George A. Schierer on behalf of the firm.

HEARING INFORMATION

Hearing Dates/Sessions: January 15, 1993 - Two (2) Sessions.
March 10, 1993 - Two (2) Session.

Hearing Location: Tampa, Florida.

CASE SUMMARY

Claimant alleged that when he opened a retirement account with Merrill Lynch in January of 1989 his investment objectives were to invest in debt instruments that would yield an acceptable rate of return with minimal risk. Claimant stated that despite those objectives Respondent recommended that he purchase Koger Equity, Inc. ("Koger") which, Claimant maintained, was unsuitable for his account and which caused him substantial financial losses.

Respondent denied all allegations of wrongdoing contained in the Statement of Claim and maintained that Claimant never told Respondent's representative that he was not interested in purchasing stocks and that he was only interested in high-grade debt instruments and that Respondent did not recommend Koger to Claimant. Respondent further maintained that each transaction in Claimant's account was expressly authorized and approved by Claimant prior to execution and that each transaction was conducted in accordance with applicable rules and regulations.

RELIEF REQUESTED

Claimant requested an Award in the amount of \$32,922.35 plus costs and reasonable attorneys' fees.

Respondent requested dismissal of Claimant's claim as well as attorneys' fees, costs and expenses.

OTHER ISSUES CONSIDERED & DECIDED

The parties have agreed that the Award in this matter may be executed in counterpart copies or that a handwritten, signed Award may be entered. In either case, the parties have agreed to receive conformed copies of the Award while the originals remain on file with the NASD.

AWARD

After considering the pleadings, the testimony and the evidence presented at the hearing, the undersigned arbitrators have decided in full and final resolution of the issues submitted for determination as follows:

1. Respondent, Merrill Lynch, is found not liable and, therefore, all claims against it are hereby dismissed.
2. Claimant's Claim for attorneys' fees is denied.
3. Respondent's Claim for attorneys' fees is denied.

OTHER COSTS

1. The parties shall each bear all costs and expenses incurred by them in connection with this proceeding.

FORUM FEES

Pursuant to Section 43c of the Code of Arbitration Procedure, the arbitrators have assessed forum fees in the amount of \$1,600.00 (four (4) hearing sessions X \$400.00).

1. Claimant is hereby assessed forum fees in the amount of \$800.00 for which the NASD shall retain the \$400.00 previously deposited by Claimant in partial settlement thereof leaving a balance due to the NASD of \$400.00.

2. Respondent is hereby assessed forum fees in the amount of \$800.00 payable to the NASD, Inc.

3. The NASD shall retain the non-refundable filing fee of \$120.00 paid by Claimant.

Fees are payable to the National Association of Securities Dealers, Inc.

ARBITRATION PANEL

Concurring Arbitrators' Signatures

/s/
John R Kiefner, Jr., Esq.
(Public/Chairman)

/s/
Michael N. Gonatos
(Industry/Panelist)

/s/
Robert J. Morris, CPA
(Public/Panelist)

Date of Decision: May 5, 1993